IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.26867 of 2004

M/s.New City Steel Traders,
rep. by Mr.S.Ashraf Ali,
625/7, Mini Market,
M.K.N.Road, Guindy,
Chennai - 600 032. .. Petitioner

vs.

1. The Regional Manager,
   M.S.T.C. Ltd.,

2. The Senior Manager,
   M.S.T.C. Ltd.,

   Both at Southern Regional Office,
   Leelavathi Building,
   Armenian Street,
   Chennai - 600 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.T.K.Kulasekaran

For respondents : Mr.M.S.Krishnan for
M/s.Sarvabhauman Associates
for R1 and R2

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O R D E R

The writ petition has been filed for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent pertaining to his letter, bearing No.MSTC/MOFB/EF/T-014-2004-2005/1719, dated 28.6.2004, and consequently to direct the respondents to permit the petitioner to remove the Lot No.10, on payment of the balance amount as shown in the first respondent's sale order, dated 23.6.2004.

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The brief facts of the case, as stated by the petitioner, are as follows:

2. The petitioner is running a business under the name and style of M/s.New City Steel Traders for over a period of eight years. He has earned a name and reputation in the said field, in which he is carrying on the business.

3. The petitioner had participated in the auction conducted by the first respondent, on 18.5.2004, in respect of Lot No.10, by submitting a sealed tender, along with 17 other parties. The petitioner was declared as the successful bidder and his offer for purchase and removal of Lot No.10 was accepted by the first respondent. On 23.6.2004, the first respondent had issued a sale order/acceptance letter calling upon the petitioner to pay a total amount of Rs.5,28,539/-, minus the Earnest Money Deposit amount of Rs.1,00,000/- already paid in respect of the said Lot. At the time of accepting the petitioner's offer, he was required to submit a demand draft in favour of the respondents, for a sum of Rs.1,00,000/-. Accordingly, the petitioner had paid the Earnest Money Deposit amount of Rs.1,00,000/- by way of a demand draft drawn on State Bank of India, Alandur Branch, Chennai.

4. It is further submitted that the tender of M/s.Karthik Trading Co., who had quoted the highest amount in respect of the said lot in question was not considered on the ground that the mandatory Earnest Money Deposit amount submitted by them was short by 48%. Therefore, the petitioner being the next highest bidder, his bid was accepted by the first respondent and a sale order, dated 23.6.2004, had been issued. The petitioner was making the arrangements to make payment of the balance amount of Rs.4,28,539/- quoted in the sale order within the last date for the payment being made, which was 3.7.2004. Having been issued the sale order, the petitioner had taken a demand draft for the balance amount of Rs.4,28,539/-. However, the second respondent had issued a letter, dated 28.6.2004, stating that the sale order, dated 23.6.2004 in respect of lot No.10 stood cancelled. It was stated by the second respondent that the sale in favour of the petitioner was cancelled, since the owners of the materials in question, namely, Engine Factory, Avadi, had advised the second respondent to cancel the sale. No valid reasons had been stated by the second respondent for the cancellation of the sale.

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5. It has been further stated by the petitioner that there is no condition, whatsoever, in the Tender Form stating that the tender already accepted could be cancelled at the intervention of the owners of the materials kept in the auction sale. The petitioner had issued a legal notice, dated 11.8.2004, calling upon the respondents to permit the petitioner to pay the balance amount and to remove the lot No.10 from the premises. It has also been pointed out by the petitioner that out of the 14 lots, which had been brought for auction, all the lots had been cleared except lot No.10 for which the petitioner was the successful bidder.

6. In the counter affidavit filed on behalf of the respondents, it has been stated that the tenders were called for, on 18.5.2004, for the purchase of 40,000 kgs. of MMAS scraps belonging to Engine Factory, (Ministry of Defence). Seventeen parties had participated in all the tenders. The petitioner was one of the six participants, who had submitted their sealed Tenders for plot No.10. The highest rate for the said lot was given by M/s.Karthik Trading Co., at Rs.16.72 per kg. The second highest rate was offered by the petitioner at Rs.15.56 per kg. However, the highest offer made by M/s.Karthik Trading Co., could not be considered, as they had failed to comply with the Earnest Money Deposit requirements. Therefore, revised improved offer was made for Lot No.10, on 1.6.2004, from all the six tenderers, who had quoted for the lot. The revised improved offer was opened on 10.6.2004 and only the petitioner, who was the second highest bidder in the earlier round, had submitted his offer. Instead of submitting a revised improved offer, they had submitted an offer for a sum of Rs.12.567 per kg. Therefore, by a letter, dated 16.6.2004, the principal had instructed the respondents to issue a sale order to the petitioner and as per their instructions, the sale order No.416, dated 23.6.2004, was issued. Further, on 24.6.2004, M/s.Karthik Trading Co., which was the highest offerer in the original tender, came forward with a renewal of their earlier offer and had also complied with the Earnest Money Deposit requirements. A legal notice, dated 26.6.2004, had also been issued on their behalf. Thereafter, a request had been made by the Principal, who had advised by a letter, dated 28.6.2004, to cancel the sale order given in favour of the petitioner.

7. Heard the learned counsel appearing on behalf of the petitioner as well as for the respondents.

8. The learned counsel appearing on behalf of the respondents had pointed out that clause 4.5. of the General terms and conditions of the tender states as follows:

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"MSTC/Owner reserves the right to withdraw from sale, the materials offered for sale in full or part thereof prior to or after the acceptance of the tender, without assigning any reason whatsoever."

Therefore, based on the said terms, the sale order given to the petitioner for lot No.10 was recalled.

9. The learned counsel appearing on behalf of the respondents had relied on the decision in M/s.KASTURI LAL LAKSHMI REDDY ETC., Vs. THE STATE OF JAMMU & KASHMIR AND ANOTHER, AIR 1980 SC 1992, wherein, the Supreme Court has held that "every activity of the Government, has a public element in it and it must therefore, be informed with reason and guided by public interest. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid. It must follow as a necessary corollary that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease-out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme, for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property."

10. Based on the rival contentions of the parties to the present writ petition and on a perusal of the records available, it is seen that the respondents had issued a sale order in favour of the petitioner, on 23.6.2004, in respect of lot No.10, which was brought for sale by tender. According to Clause 4.5. of the tender, the owner can withdraw from sale, the materials offered for sale, in full or part thereof, prior to or after the acceptance of the tender, without assigning any reason whatsoever. However, it does not go to the extent of saying that the withdrawal could be made even after concluding the sale finally. If that is the accepted position, then it is always open to the owner to cancel the concluded sale as and when he finds it convenient to do so. In such

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a case, there will not be a binding nature for the sale and there will not be any finality for it. Therefore, clause 4.5. of the tender conditions should be taken to mean that the owner possesses the power to withdraw from sale any of his materials before the sale is finally concluded by the issuing of a sale order.

11. In such view of the matter, the writ petition stands allowed, quashing the impugned proceedings of the second respondent, bearing No.MSTC/MOFB/EF/T-014-2004-2005/1719, dated 28.6.2004, and by directing the respondents to permit the petitioner to remove the materials in lot No.10 on payment of the balance amount, as shown in the first respondent's sale order, dated 23.6.2004. No costs.
Lan

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Regional Manager,
M.S.T.C. Ltd.,
Southern Regional Office
Leelavathi Building, Armenian Street,
Chennai - 1

2. The Senior Manager,
M.S.T.C. Ltd.,
Southern Regional Office,
Leelavathi Building,
Armenian Street,
Chennai - 600 001.

+ one cc to Mr. T.K. Kulasekaran, Advocate sr no. 5201
+ one cc to M/s. Sarvabhauman Associates, sr no. 5090

MM(CO)
NM(03.02.07)

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